



0000091327

## BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

Arizona Corporation Commission

**DOCKETED**

DEC -9 2008

DOCKETED BY

ne

In the matter of:

JAMES LEROY COSTELLO  
(CRD# 1501345), a married man,  
individually and doing business as  
COSTELLO & ASSOCIATES-  
FINANCIAL, an Arizona registered trade  
name, and

LINDA S. COSTELLO, spouse of JAMES  
LEROY COSTELLO

Respondents.

DOCKET NO. S-20627A-08-0485

DECISION NO. **70632**

**ORDER TO CEASE AND DESIST, ORDER  
FOR RESTITUTION AND FOR  
ADMINISTRATIVE PENALTIES  
REGARDING JAMES LEROY COSTELLO  
AND LINDA S. COSTELLO**

On September 24, 2008 the Securities Division of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, for Administrative Penalties and for other Affirmative Action ("Notice") in the matter against JAMES LEROY COSTELLO, individually and doing business as COSTELLO & ASSOCIATES-FINANCIAL, and LINDA S. COSTELLO.

The Notice was personally served upon JAMES LEROY COSTELLO ("COSTELLO") on September 25, 2008. The Notice was served via certified mail upon LINDA S. COSTELLO ("L. COSTELLO") on September 27, 2008. Both COSTELLO and L. COSTELLO failed to file an answer within 30 days of service of the Notice as required by A.A.C. R14-4-305. In addition, neither COSTELLO nor L. COSTELLO requested an administrative hearing within 10 days after receipt of the Notice, pursuant to A.R.S. § 44-1972 (D) and A.A.C. R14-4-306.

**I.****FINDINGS OF FACT**

1. JAMES LEROY COSTELLO is an individual residing in Maricopa County, Arizona. COSTELLO has transacted business under the trade name "COSTELLO & ASSOCIATES-FINANCIAL" ("CA&F") which was registered with the Arizona Secretary of State on April 26, 1999.

2. COSTELLO and L. COSTELLO may be referred to as the "COSTELLO RESPONDENTS".

3. At all relevant times, COSTELLO and L. COSTELLO were married. COSTELLO acted for the benefit or in further of the marital community.

4. From about May 1999 until March 2007, COSTELLO offered unregistered securities, in the form of promissory notes and/or investment contracts, to investors located in Arizona. At all relevant times, the securities COSTELLO offered and sold were not registered with the Commission.

5. COSTELLO was a registered securities salesman in Arizona from May 23, 1986 until September 15, 2003. However, at all relevant times COSTELLO was not registered with the Commission as a securities salesman.

6. COSTELLO is a licensed insurance producer with the state of Arizona. COSTELLO was initially licensed by the Arizona Department of Insurance to sell insurance products in 1981.

7. In some instances, COSTELLO solicited investors through his insurance business, CA&F. At all relevant times, CA&F was not registered as a securities dealer in Arizona.

8. From about May 1999 until March 2007, COSTELLO raised at least \$195,000 from at least 15 investors. The investors believed they were purchasing viatical settlement investment contracts ("viaticals"). COSTELLO sold to the investors securities, in the form of promissory notes and/or investment contracts.

1           9.       COSTELLO solicited investments from investors. COSTELLO told offerees that he  
2 would use investor funds to purchase viaticals on their behalf. Specifically, COSTELLO told  
3 investors that he worked with someone who identified the securities that COSTELLO would  
4 purchase. In addition, COSTELLO represented to investors that he would arrange for collection of  
5 payment of benefits on behalf of his investors when benefits were repaid on their investments.

6           10.     COSTELLO promised offerees and investors a 50% to 100% return on their  
7 investments, including principal and interest. COSTELLO represented to investors in their  
8 promissory notes the date their investments would be repaid.

9           11.     Although COSTELLO represented to investors that their funds would be used to  
10 purchase viaticals, COSTELLO did not provide investors with any documents to evidence they were  
11 actually invested in viaticals.

12          12.     In one instance, an offeree and investor requested proof (e.g. documents) to confirm  
13 that the funds he invested with COSTELLO were actually used to purchase viaticals. COSTELLO  
14 did not provide the investor with any documentation to support his claim that he had actually  
15 purchased a viatical on behalf of the investor. To date, COSTELLO has not provided his investors  
16 with documents to confirm that their funds were actually used to purchase viaticals.

17          13.     The only document each of COSTELLO'S investors received was an untitled  
18 document which listed the investor's name, the amount of their investment, the terms of their  
19 investment, and the date and amount of the investor's return on their investment. The investor and  
20 COSTELLO signed the document. At least two investors believed this document to be a  
21 "promissory note".

22          14.     COSTELLO told at least one offeree and investor that the opportunity to invest with  
23 him in viaticals was only available to select individuals.

24          15.     An offeree and investor asked COSTELLO to provide the names of other investors  
25 and the insurance companies which issued the viaticals. However, COSTELLO did not provide the  
26 investor with the requested information.

1           16. On various occasions, COSTELLO made the following representations:

2           a) COSTELLO led an investor to believe that the securities he offered were  
3 exempt from registration;

4           b) In at least two instances, COSTELLO represented to offerees that he was  
5 registered to sell securities after his registration to sell securities had terminated;

6           c) In another instance, COSTELLO told an investor he was a "certified  
7 investment adviser";

8           d) COSTELLO told offerees and investors that their investments with him were  
9 risk free and guaranteed; and

10          e) COSTELLO also represented to investors that a state insurance fund would  
11 protect them from the loss of their investment.

12          17. None of these representations made by COSTELLO were true.

13          18. In one instance, COSTELLO showed an investor a copy of an insurance policy and  
14 represented to the investor that the policy was evidence of the viatical COSTELLO  
15 purchased on the investor's behalf.

16          19. To date, COSTELLO has not repaid many of his offerees and investors.

17          20. COSTELLO has given his offerees and investors varying explanations for his failure  
18 to repay their investments. In a few instances, COSTELLO told an investor that he was unable to  
19 repay his investment because COSTELLO was not receiving payment from the insurance  
20 companies for the viaticals.

21          21. In at least one instance, COSTELLO told an offeree and investor that he was unable  
22 to repay him because COSTELLO was being investigated and audited by the United States Internal  
23 Revenue Service in addition to being sued by an investor.

24          22. Although COSTELLO has not repaid many of his investors, COSTELLO has  
25 partially repaid some investors. In spite of this, in at least one instance COSTELLO asked an offeree  
26

1 and investor to invest additional funds even though the investor has not been entirely repaid for his  
2 initial investment.

3 23. On another occasion, COSTELLO promised an investor a higher return on his  
4 investment because of a delay in repaying the investment.

5 24. Although COSTELLO told offerees and investors that he would use their  
6 investments to purchase viaticals, COSTELLO did not use the funds to purchase viaticals. Instead,  
7 COSTELLO deposited most of the funds he received into his personal bank. In some instances,  
8 COSTELLO used investor funds to repay other investors or to pay expenses which were not  
9 disclosed to investors.

## 10 II.

### 11 CONCLUSIONS OF LAW

12 2. The Commission has jurisdiction over this matter pursuant to Article XV of the  
13 Arizona Constitution and the Securities Act.

14 3. The COSTELLO RESPONDENTS did not request a hearing pursuant to A.R.S. § 44-  
15 1972 and A.A.C. R14-4-306.

16 4. The COSTELLO RESPONDENTS did not answer the Notice pursuant to A.A.C.  
17 R14-4-305.

18 5. COSTELLO offered or sold securities within the meaning of A.R.S. §§ 44-1801(15),  
19 44-1801(21) and 44-1801(26).

20 6. COSTELLO violated A.R.S. § 44-1841 by offering or selling securities that were  
21 neither registered nor exempt from registration.

22 7. COSTELLO violated A.R.S. § 44-1842 by offering or selling securities while neither  
23 registered as a dealer or salesman nor exempt from registration.

24 8. COSTELLO violated A.R.S. § 44-1991 by (a) employing a device, scheme or artifice  
25 to defraud; (b) making untrue statements or misleading omission of material facts, and (c) engaging  
26

1 in transactions, practices or a course of business which operate or would operate as a fraud or deceit  
2 upon offerees and investors. COSTELLO'S conduct includes the following:

- 3 a) COSTELLO misled offerees and investors to believe that the funds they  
4 invested with him would be used to purchase viaticals, when in fact COSTELLO did  
5 not use the funds for that purpose. Instead, COSTELLO used investors' funds to  
6 repay other investors and in some instances pay for expenses not authorized by  
7 investors;
- 8 b) In one instance, COSTELLO showed an investor a copy of an insurance  
9 policy and represented to the investor that the policy was evidence of the investment  
10 COSTELLO has made on her behalf in viaticals, when in fact COSTELLO did not  
11 use the investor's funds to purchase a viatical;
- 12 c) COSTELLO misled at least one offeree and investor to believe that he was  
13 registered to sell securities, when in fact COSTELLO'S registration to sell securities  
14 in Arizona was terminated on September 15, 2003;
- 15 d) In another instance, COSTELLO misled an investor to believe that he was a  
16 registered investment adviser, when in fact COSTELLO was not;
- 17 e) COSTELLO misrepresented to an offeree and investor that the investment he  
18 offered was exempt from registration, when in fact it was not;
- 19 f) COSTELLO misrepresented to offerees and investors that the viatical  
20 investment was guaranteed and risk free, when in fact a guarantee did not exist; and
- 21 g) COSTELLO misrepresented to offerees and investors that a state insurance  
22 fund would protect them against the loss of their investments, when in fact the  
23 purpose of the state insurance fund is not to protect investors against the loss of their  
24 investments, nor had COSTELLO purchased viaticals on behalf of the investors.

25 9. COSTELLO'S conduct is grounds for a cease and desist order pursuant to A.R.S. §  
26 44-2032.



10. COSTELLO'S conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032.

11. COSTELLO'S conduct is grounds for administrative penalties under § 44-2036.

12. COSTELLO acted for the benefit of the marital community and, pursuant to A.R.S. §§ 25-214 and 25-215, this Order of restitution and administrative penalties is a debt of the community.

### III.

## ORDER

THEREFORE, based upon the Findings of Facts and Conclusions of Law, the Commission finds that the following relief is appropriate, in the public interest and necessary for the protection of investors:

IT IS THEREFORE ORDERED, pursuant to A.R.S. §§ 44-2032, that COSTELLO, his agents, servants, employees, successors, assigns, and those persons in active concert or participation with him, permanently cease and desist from violating the Securities Act. COSTELLO shall not sell any securities within or from Arizona without being registered in Arizona as a dealer or salesman, or exempt from such registration. COSTELLO shall not sell securities within or from Arizona unless the securities are registered in Arizona or exempt from registration. COSTELLO shall not transact business in Arizona as investment advisers or investment adviser representatives unless licensed in Arizona or exempt from licensure.

IT IS FURTHER ORDERED that pursuant to A.R.S. §§ 44-2032, COSTELLO and the marital community of COSTELLO and L. COSTELLO shall pay restitution to the investors shown on the records of the Commission in the amount of ONE HUNDRED AND NINETY FIVE THOUSAND DOLLARS (\$195,000.00) Any amount outstanding shall accrue interest at the rate of 10% per annum from the date of this Order until paid in full. Payment shall be made by cashier's check or money order payable to the "State of Arizona" and placed in an interest-bearing account maintained and controlled by the Commission. The Commission shall disburse the funds on a pro

1 rata basis to investors. Any funds that the Commission determines it is unable to, or cannot  
2 feasibly, disburse shall be transferred to the general fund of the state of Arizona. If COSTELLO  
3 does not comply with this order of restitution, any outstanding balance shall be in default and shall  
4 be immediately due and payable.

5 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that COSTELLO and the  
6 marital community of COSTELLO and L. COSTELLO shall pay an administrative penalty in the  
7 amount of SEVENTY FIVE THOUSAND DOLLARS (\$75,000). Payment shall be made by  
8 cashier's check or money order payable to the "State of Arizona". Any amount outstanding shall  
9 accrue interest at the rate of 10% per annum from the date of this Order until paid in full.

10 ...

11 ...

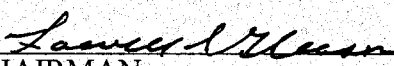
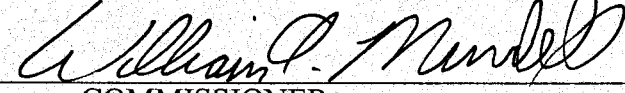
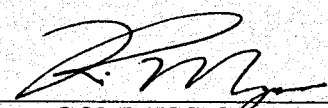
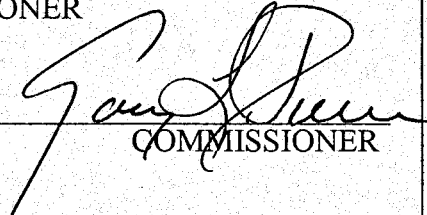
12 ...



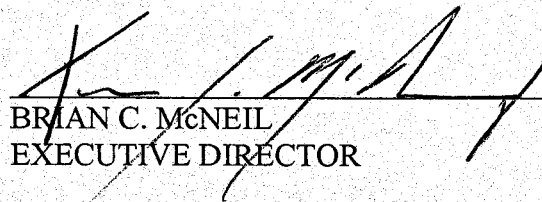
IT IS FURTHER ORDERED that if COSTELLO fails to comply with this Order, the Commission may bring further legal proceedings against COSTELLO, including application to the Superior Court for an order of contempt.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

 CHAIRMAN	 COMMISSIONER
 COMMISSIONER	 COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 9<sup>th</sup> day of December, 2008.

  
BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Linda Hogan, ADA Coordinator, voice phone number 602-542-3931, E-mail [lhogan@azcc.gov](mailto:lhogan@azcc.gov)

(rfs)